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Supreme Court of the United States

OCTOBER TERM—1952

No. 363

JOHN DONALD WALKER,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

We desire to make reply to certain matters in the respondent's brief.

(1)

There is not just one question presented in this proceeding, as is stated on page 2 of respondent's brief. There are, in fact, five questions presented, and such questions are fully set forth on pages 6 and 7 of petitioner's papers in this proceeding.

(2)

On page 7 of respondent's brief it is stated that petitioner's efforts to secure a copy of the complaint were begun only after the affirmance of his conviction by the Court of Appeals in 1951. Respondent's statement is not supported by the record.

On page 38 of the record in this case there is incorporated a letter, dated December 30, 1948, from the Clerk of the United States District Court for the Eastern District of Kentucky addressed to the petitioner herein from which it appears that, on December 27th, 1948, prior to petitioner's trial and conviction herein, he sought to obtain from the Clerk of the Court a certified copy of the record of the proceedings in the Kentucky case. Such request was made by petitioner one year *prior* to December 31, 1949, when the complaint was, according to the Clerk of the Court, filed with him (96), and *four* years prior to the discovery of the complaint by the Clerk of the court (175-6).

It is, therefore, apparent that petitioner sought to secure a copy of the complaint prior to his trial and conviction on May 31, 1950. In addition to the letter, dated December 30, 1948, of the Clerk of the District Court, establishing that petitioner herein at that time sought the record of the Kentucky proceedings, petitioner's petition in this proceeding contains his allegation, undenied by the respondent, that both prior to, and after December 31, 1949, he unsuccessfully sought to obtain a copy of the complaint in the Kentucky proceeding (37). Petitioner offered to submit, at a hearing, evidence of his efforts to secure, both prior and subsequent to December 31, 1949, a copy of such complaint, but the District Court summarily denied the petition without according petitioner the hearing to which he was entitled under 28 U.S.C.A. § 2255. The Clerk's letter of December 30, 1948, establishes that petitioner sought a copy of the complaint prior to his trial and conviction, and the record in this proceeding under 28 U.S.C.A. § 2255 discloses that petitioner was denied the opportunity of offering proof of the fact that he did seek to secure a copy of the Kentucky complaint prior to December 31, 1949.

(3)

To support the sufficiency of the complaint, which petitioner attacks, the Solicitor General states on page 8 of his brief that "even an indictment so stated in terms of the statute would be sufficient." This argument ignores the prohibition in the Fourth Amendment that "No warrant shall issue, but upon probable cause, supported by oath or affirmation." Moreover, even an indictment, stated in the language of the statute, must rest upon the sworn testimony of witnesses having personal knowledge of the facts and may be dismissed if it rests upon hearsay. In the case at bar, the warrant was issued upon a hearsay complaint of a federal agent who evidently had no personal knowledge of the facts. The objection, which petitioner makes to the complaint, is not as to form but rather as to substance.

(4)

On page 10 of respondent's brief, cases are cited to support respondent's point—that an objection to the admissibility of evidence even on constitutional grounds does not support a collateral attack by habeas corpus or by motion under 28 U. S. C. A. 2255. While the cases cited support respondent's point, they are inapplicable to the case at bar. Such cases relate to errors of the trial court in the admission of evidence, which errors are subject to correction on appeal. That is not the situation in the case at bar. Petitioner does not rely upon errors of the trial court in the admission of evidence. The admission of the illegal evidence, upon which his conviction rests, was not objected to by petitioner at his trial, and the queston was not raised on his appeal from his conviction, *because petitioner, due to the suppression of the complaint by federal officials, was ignorant, at the time of his trial and at the time of his appeal, of the invasion of his constitutional rights and of the illegality of the evidence adduced at his trial.*

For all of the reasons stated in petitioner's main brief and the reasons stated herein, we respectfully submit that a writ of certiorari should be granted.

Respectfully submitted,

PETER L. F. SABBATINO.

PETER L. F. SABBATINO,
THOMAS J. TODARELLI,
EDWARD J. FONTANA,
Of Counsel.